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12 CAREMORE HEALTH PLAN, INC.

13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
16

17 Olivia F. Gonzales,

18 Plaintiff,

19 vs.

20 Caremore Health Plan, Inc.

21 Defendant
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Case No. CV 15-1499 ODW (FFMx)

DISCOVERY MATTER

**[PROPOSED] ORDER REGARDING
STIPULATED PROTECTIVE ORDER**

1 The Court, upon consideration of the Parties' Stipulated Protective Order
2 dated January 19, 2016, and finding good cause thereon, HEREBY ORDERS that
3 the following terms shall govern the handling and disclosure of documents, things,
4 and information produced in this action:

5
6 1. A. PURPOSE AND LIMITATIONS

7 Discovery in this action is likely to involve production of confidential,
8 proprietary, or private information for which special protection from public
9 disclosure and from use for any purpose other than prosecuting this litigation may
10 be warranted. Accordingly, the parties stipulated to and petitioned the Court to
11 enter the following Stipulated Protective Order. The parties acknowledge that this
12 Order does not confer blanket protections on all disclosures or responses to
13 discovery and that the protection it affords from public disclosure and use extends
14 only to the limited information or items that are entitled to confidential treatment
15 under the applicable legal principles. The parties further acknowledge, as set forth
16 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
17 file confidential information under seal; Civil Local Rule 79-5 sets forth the
18 procedures that must be followed and the standards that will be applied when a party
19 seeks permission from the court to file material under seal.

20 B. GOOD CAUSE STATEMENT

21 This action is likely to involve medical, financial, technical and/or proprietary
22 information for which special protection from public disclosure and from use for
23 any purpose other than prosecution of this action is warranted. Such confidential
24 and proprietary materials and information consist of, among other things,
25 confidential business or financial information, information regarding confidential
26 business practices, information implicating privacy rights of third parties,
27 confidential medical information, and information otherwise generally unavailable
28 to the public or which may be privileged or otherwise protected from disclosure

under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: the above-entitled proceeding, Case No. CV 15-1499 ODW (FFMx).

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced or
2 generated in disclosures or responses to discovery in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as
5 an expert witness or as a consultant in this Action.

6 2.8 House Counsel: attorneys who are employees of a party to this Action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.9 Non-Party: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this action.

11 2.10 Outside Counsel of Record: attorneys who are not employees of a
12 party to this Action but are retained to represent or advise a party to this Action and
13 have appeared in this Action on behalf of that party or are affiliated with a law firm
14 which has appeared on behalf of that party, and includes support staff.

15 2.11 Party: any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 2.13 Professional Vendors: persons or entities that provide litigation
21 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.14 Protected Material: any Disclosure or Discovery Material that is
25 designated as "CONFIDENTIAL."

26 2.15 Receiving Party: a Party that receives Disclosure or Discovery
27 Material from a Producing Party.
28

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 Any use of Protected Material at trial shall be governed by the orders of the
8 trial judge. This Order does not govern the use of Protected Material at trial.

9
10 4. DURATION

11 Even after final disposition of this litigation, the confidentiality obligations
12 imposed by this Order shall remain in effect until a Designating Party agrees
13 otherwise in writing or a court order otherwise directs. Final disposition shall be
14 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
15 or without prejudice; and (2) final judgment herein after the completion and
16 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
17 including the time limits for filing any motions or applications for extension of time
18 pursuant to applicable law.

19
20 5. DESIGNATING PROTECTIVE MATERIAL21 5.1 Exercise of Restraint and Care in Designating Material for Protection.

22 Each Party or Non-Party that designates information or items for protection under
23 this Order must take care to limit any such designation to specific material that
24 qualifies under the appropriate standards. The Designating Party must designate for
25 protection only those parts of material, documents, items, or oral or written
26 communications that qualify so that other portions of the material, documents,
27 items, or communications for which protection is not warranted are not swept
28 unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (e.g., to unnecessarily encumber the case development process or to impose
4 unnecessary expenses and burdens on other parties) may expose the Designating
5 Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it
7 designated for protection do not qualify for protection, that Designating Party must
8 promptly notify all other Parties that it is withdrawing the inapplicable designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in
10 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
12 under this Order must be clearly so designated before the material is disclosed or
13 produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic
16 documents, but excluding transcripts of depositions or other pretrial or trial
17 proceedings), that the Producing Party affix at a minimum, the legend
18 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
19 contains protected material. If only a portion or portions of the material on a page
20 qualifies for protection, the Producing Party also must clearly identify the protected
21 portion(s) (e.g., by making appropriate markings in the margins).

22 A Party or Non-Party that makes original documents available for inspection
23 need not designate them for protection until after the inspecting Party has indicated
24 which documents it would like copied and produced. During the inspection and
25 before the designation, all of the material made available for inspection shall be
26 deemed "CONFIDENTIAL." After the inspecting Party has identified the
27 documents it wants copied and produced, the Producing Party must determine which
28 documents, or portions thereof, qualify for protection under this Order. Then,

1 before producing the specified documents, the Producing Party must affix the
2 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
3 portion or portions of the material on a page qualifies for protection, the Producing
4 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
5 markings in the margins).

6 (b) for testimony given in depositions that the Designating Party identify
7 the Disclosure or Discovery Material on the record, before the close of the
8 deposition all protected testimony.

9 (c) for information produced in some form other than documentary and for
10 any other tangible items, that the Producing Party affix in a prominent place on the
11 exterior of the container or containers in which the information is stored the legend
12 “CONFIDENTIAL.” If only a portion or portions of the information warrants
13 protection, the Producing Party, to the extent practicable, shall identify the protected
14 portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
16 failure to designate qualified information or items does not, standing alone, waive
17 the Designating Party’s right to secure protection under this Order for such material.
18 Upon timely correction of a designation, the Receiving Party must make reasonable
19 efforts to assure that the material is treated in accordance with the provisions of this
20 Order.

21 22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
24 designation of confidentiality at any time that is consistent with the Court’s
25 Scheduling Order.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
27 resolution process under Local Rule 37.1 *et seq.*

28 6.3 The burden of persuasion in any such challenge proceeding shall be on

the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall

1 include a copy of the subpoena or court order;

2 (b) promptly notify in writing the party who caused the subpoena or order to
3 issue in the other litigation that some or all of the material covered by the subpoena
4 or order is subject to this Protective Order. Such notification shall include a copy of
5 this Stipulated Protective Order; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued
7 by the Designating Party whose Protected Material may be affected. If the
8 Designating Party timely seeks a protective order, the Party served with the
9 subpoena or court order shall not produce any information designated in this action
10 as “CONFIDENTIAL” before a determination by the court from which the
11 subpoena or order issued, unless the Party has obtained the Designating Party’s
12 permission. The Designating Party shall bear the burden and expense of seeking
13 protection in that court of its confidential material and nothing in these provisions
14 should be construed as authorizing or encouraging a Receiving Party in this Action
15 to disobey a lawful directive from another court.

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17 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
18 PRODUCED IN THIS LITIGATION

19 (a) The terms of this Order are applicable to information produced by a Non-
20 Party in this Action and designated as “CONFIDENTIAL.” Such information
21 produced by Non-Parties in connection with this litigation is protected by the
22 remedies and relief provided by this Order. Nothing in these provisions should be
23 construed as prohibiting a Non-Party from seeking additional protections.

24 (b) In the event that a Party is required, by a valid discovery request, to
25 produce a Non-Party’s confidential information in its possession, and the Party is
26 subject to an agreement with the Non-Party not to produce the Non-Party’s
27 confidential information, then the Party shall: (1) promptly notify in writing the
28 Requesting Party and the Non-Party that some or all of the information requested is

1 subject to a confidentiality agreement with a Non-Party; (2) promptly provide the
2 Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant
3 discovery request(s), and a reasonably specific description of the information
4 requested; and (3) make the information requested available for inspection by the
5 Non-Party, if requested.

6 (c) If the Non-Party fails to seek a protective order from this court within 14
7 days of receiving the notice and accompanying information, the Receiving Party
8 may produce the Non-Party's confidential information responsive to the discovery
9 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
10 not produce any information in its possession or control that is subject to the
11 confidentiality agreement with the Non-Party before a determination by the court.
12 Absent a court order to the contrary, the Non-Party shall bear the burden and
13 expense of seeking protection in this court of its Protected Material.

14 15 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
17 Protected Material to any person or in any circumstance not authorized under this
18 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
19 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
20 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
21 persons to whom unauthorized disclosures were made of all the terms of this Order,
22 and (d) request such person or persons to execute the "Acknowledgment and
23 Agreement to Be Bound" that is attached hereto as Exhibit A.

24 25 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 26 PROTECTED MATERIAL

27 When a Producing Party gives notice to Receiving Parties that certain
28 inadvertently produced material is subject to a claim of privilege or other protection,

the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

13. FINAL DISPOSITION

After the final disposition of this Action, as defined in paragraph 4, within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in

1 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
 2 summaries, and any other format reproducing or capturing any of the Protected
 3 Material. Whether the Protected Material is returned or destroyed, the Receiving
 4 Party must submit a written certification to the Producing Party (and, if not the same
 5 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
 6 (by category, where appropriate) all the Protected Material that was returned or
 7 destroyed and (2) affirms that the Receiving Party has not retained any copies,
 8 abstracts, compilations, summaries or any other format reproducing or capturing any
 9 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
 10 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
 11 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
 12 reports, attorney work product, and consultant and expert work product, even if such
 13 materials contain Protected Material. Any such archival copies that contain or
 14 constitute Protected Material remain subject to this Protective Order as set forth in
 15 Section 4 (DURATION).

16
 17 14. Any violation of this Order may be punished by any and all appropriate
 18 measures including, without limitation, contempt proceedings and/or monetary
 19 sanctions.

20
 21 IT IS SO ORDERED.

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 23
 24 DATED: January 21, 2016

/S/

25 The Honorable Frederick F. Mumm
 26 United States Magistrate Judge
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